1946 K **File No.** C L·O·Rs/46

Legal Dept

A. **BRANCH**

Subject:— Opinions under the

new Orders Rules

1:6/P.

File No. O L·O Rs 146

Gen. 194 a.

219 A

C O N T E NT S.

Legal Department File No. C L.C.R.s./46.

Sr. No.	Compilation No.	Subject.	Pages.
	C L.C.R.s. /1946.	Opinio s under the Law officers Rules.	
1.	Cn 1681 28-2-46.	Question whether nobody can sign "for" another person who is authorised to sign orders for Provincial Govt.	1-18.

2xxxxxxx

Note by A.L.F.(Mr. Halliday)

Is the form

By order of the Governor of
Bombay,

for { R.S. Halliday,
P.H. HOCS,
Secretary to Government

Legal?

It seems to date from time immemorial but it seems contrary to Rules of Business 12 and 13 on two grounds.

The A.L.R. cannot sign under Rule 13.

Whether he can or not, nobody can sign for a person authorised under rule 13.

Issue this G.F. and then consider.

I.d. P.S.H.

4-6-1945.

"True copy - Original papers being of bad quality - Destroyed".

sd/-

Superintendent,
D Branch, Legal Department.

N.V.D.
5/7
4c.

submitted with reference to A.L.R's ~~xxxxx~~ note at p. 41 ante.

The view expressed by A.L.R. that nobody can sign "for" another person who is authorised to sign ord rs for Provincial Government is correct. The recent R.L.A's opinion No. 4131 , dated 30th May 1945 is on the point.

2. The rule 13 of the "Rules of Business" does not appear to authorise A.L.R. to sign as it mentions Deputy Secretary but does not mention Ex-officio Deputy Secretary. There do not a pear to be any orders under which A.L.R. has been - specially ~~xxix~~ authorised to sign the orders.

3. As regards the question when the practice for signing these G. Rs. ~~xxxx~~ by A.L.R. was started, old files were seen. In 1900 such G.Rs. were signed by "Under Secretary" of the Judicial Department. The G.P. did not mention that the order was ~~xxxxxx~~ on behalf of Governor but was simply signed by Under Secretary and below the signature the designation of U.S. was printed. In 1915-16 the G.Rs. were sometimes signed by Secretary and sometimes by someone else "for" Secretary. The G.Rs. however did not mention that they were "By the order of the Governor' Files of 1932 show that the G.Rs. were signed "for Secretary" whose name was typed on the G.P. as is done nowadays. The G.Rs. were expressed to be "By order of the Governor in Council". This form of G.R. appears to have continued upto now with the only change that the order is expressed to be in the name of the Governor instead of the Governor in Council. Since the time of appointment of A.L.R. in 1935 it appears that such G.Rs were submitted to him for signature. It may be noted that even the order appointing A.L.R. has been signed by Mr. J.P. Dhurandhar "for" officiating Secretary.

4. In view of the legal defect pointed out by A.L.R.

the form of G.R. may be changed. At least in case of appeals against acquittals, the Provincial Government has to direct the P.P. to present it, and though it is unlikely that any body will question the existence of a proper order in this respect when P.P. presents the appeal in view of section 114 illus(e), of the Evidence Act still if questioned the corrective order is likely to ruin the whole case. Hence it would be necessary to issue orders in strict confirmity with Rule 13 of Business.

Rege.
21/6

A.L.P. I agree.

(1) G.Rs. & everything that has to be expressed to be done 'By order of the Governor of Bombay' may be signed directly and not for' Secretary or any one else. I should think most of the G.Rs. etc. may be signed by one of the Asstt. Secretaries.

(2) A.L.R. may be authorised to sign. Presumably all the Asstt. Secretaries can already sig. but not the P.As. It is for orders whether the P.A. and A.P.A. should be authorised. And there is also A.A.L.R.

R.S.H.
21/6

D.S. I agree that in 'formal' documents, signatures should be direct if rule 13 of the Rules of Business applies (i.e. if they are "By order of the Governor of Bombay"). A.L.P. & A.A.L.P. may be authorised, as well P.A. and A.P.A.

Td/- N.K.D.
21/6/45.

R.L.A. I agree. In another reference I have suggested the issue of a draft circular to all Depts. a copy of that circular may be appended to his file before the case is submitted to A(H).

P.N. HOSS,
22/6/45.

Resubmitted with a copy of the draft circular.

2. The circular has been sent to P.& S.D. for issue. P.& S.D. has not so far issued the circular and it is

understood that the case has been submitted to Chief Secretary.

Rose.
23/6

A.L.F. MD/-F.S.H.

R.L.A. P.N. MOSS,
23/6/45,

A(H) 26/6/ 45.

Poll. & Services Deptt.
(B Branch).

A(H) has agreed that certain officers in the L.D. should be empowered to sign all orders or instruments of the Government of Bombay. The accompanying G.P. may issue.

2. The papers containing the proposed Circular i.e. authentication of Notifications, Orders, etc. have been referred back to the L.D. for elucidation of certain points raised in the P.& S.D. 3/7/45.

Before issuing this authorisation under Business Rule 13, we may perhaps request L.D. to be so good as to make it clear what kind of Government orders will be authenticated by officers under the P.L.A. as such i.e. as distinct from Secretary to Government in L.D. This point arises because far as I can see, P.L.A. and officers under him (i.e. A.L.P. or P.A. to P.L.A.) are law officers of Govt. whose functions are advisory and not executive. To put it differently P.L.A. can adivse Government on matters referred to him but cannot issue orders of Government. It will be noted that under rule 13 no authority is given to P.L.A. as such and since P.L.A. has not the authority to sign instruments of Government under that rule, it is not known how officers under him (i.e. under him as P.L.A. and not those under him as Secy. L.D.) can be xx invested with that authority.

Id/- 5/7.

U.S. L.D. is requested kindly to make the position clear.
Id/- 6/7/45.

Rules of Business.

Authorisation under rule 13 of the of certain officers

Rules of Business.
Authorisation under rule 13 of the of certain officers in the Legal Department to sign orders of Government.

Government of Bombay.
Political and Services,
Department.
Resolution No. 996/34.
Bombay Castle, 31st December 1935.

RESOLUTION

In pursuance of Rule 13 of the Rules of Business made under Section 59 of the Government of India Act, 1935, the Governor of Bombay, in his discretion, is hereby pleased to empower the following officers in the Legal Department to sign all orders or instruments of the Government of Bombay in that Department:-

Asstt. Remembrancer of Legal Affairs,

Personal Asstt. to the P.L.A. and Secy. to Govt. Legal Department.

By order of the Governor of Bombay,

sd/-

Chief Secretary to the Govt. of Bombay,
P. & S.D.

n.v. d.
5/7
4c.